

EXHIBIT B

Confidential Information
Kirk Deeter – November 30, 2016

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS
AUSTIN DIVISION

YETI COOLERS, LLC,)
Plaintiff,)
v.) Case No.
RTIC COOLERS, LLC,) 1:15-cv-597-RP
JOHN JACOBSEN, and)
JAMES JACOBSEN,)
Defendants.)
-----)

CONFIDENTIAL INFORMATION

VIDEOTAPED DEPOSITION OF KIRK DEETER
WEDNESDAY, NOVEMBER 30, 2016
DENVER, COLORADO

Confidential Information
Kirk Deeter – November 30, 2016

6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 (Whereupon, Exhibit Deeter 305, 2 Kirk Deeter LinkedIn page, No Bates, 3 was marked for identification.) 4 - - - 5 Q. Mr. Deeter, you have just been 6 handed a document marked Exhibit 305. Do you 7 see that? 8 A. I do. 9 Q. Do you recognize this document? 10 A. Yeah. I think it's my LinkedIn 11 page. 12 Q. You said that -- you said it 13 was your LinkedIn page? 14 A. Yes. 15 Q. So, Mr. Deeter, I want to spend 16 some time talking with you about your 17 education and experience. Okay? 18 A. Um-hum. 19 Q. Looking at your LinkedIn page, 20 I see that there are three entries here under 21 Experience. Do you see that? 22 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 So right now, let's move 2 earlier in time to a period that I don't 3 believe is covered by your LinkedIn page or 4 your report, and that would be what you did 5 upon the completion of high school. Okay. 6 A. Okay. 7 Q. So did you go to college, 8 Mr. Deeter? 9 A. I did. 10 Q. Where did you go to college? 11 A. University of Michigan. 12 Q. And when did you obtain your 13 degree from there? 14 A. I finished in 1988. 15 Q. And how many degrees did you 16 obtain from the University of Michigan? 17 A. None. I was -- studied there 18 until I was -- you know, four years, but 19 English was what I studied. 20 Q. You're saying you did not 21 receive a degree from the university? 22 A. That's right.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Those three entries relate to 2 Trout magazine, Angling Trade, and Field & 3 Stream; is that right? 4 A. That's right. 5 Q. Is what's on your LinkedIn 6 page accurate as of today? 7 A. Yes. 8 Q. Okay. And those three items in 9 the Experience section I just mentioned are 10 the extent of what's in your LinkedIn 11 profile; is that right? 12 A. Yes. I don't really use 13 LinkedIn much, but that's what I have on 14 there. 15 Q. Understood. 16 I believe that you actually 17 address Trout magazine, or Trout, and Angling 18 Trade and Field & Stream in your report; is 19 that right? 20 A. Yes. 21 Q. Okay. So we'll put this aside 22 and address those when we get to your report.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. And English is what you 2 studied? 3 A. Yes. 4 Q. Okay. Was that the extent of 5 your education after high school? 6 A. Yes. 7 Q. So I'll explain first what I'd 8 like to do and then I'll ask you a fresh 9 question. 10 But I'd like to step through 11 your work and professional experience after, 12 now, the University of Michigan up through 13 what you do today. 14 A. Okay. 15 Q. So what did you do after you -- 16 after 1988 when you finished your time at the 17 University of Michigan? 18 A. I became a reporter at the 19 Doylestown Intelligencer, in Doylestown, 20 Pennsylvania. I was a sports reporter. 21 Q. And what year did you start 22 there?</p>

Confidential Information
Kirk Deeter – November 30, 2016

7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 A. In 1988.</p> <p>2 Q. And you reported on sports, you</p> <p>3 said.</p> <p>4 A. Yes.</p> <p>5 Q. Which sports?</p> <p>6 A. Mostly high school sports.</p> <p>7 Q. Like basketball, football?</p> <p>8 A. Wrestling, basketball,</p> <p>9 football, swimming.</p> <p>10 Q. And how long were you working</p> <p>11 as a reporter in Doylestown?</p> <p>12 A. I believe it was two years.</p> <p>13 I'm not entirely sure, but I think two years.</p> <p>14 Q. And what did you do after that?</p> <p>15 A. I started working at Deeter</p> <p>16 Associates, which is -- my father has a</p> <p>17 marketing and communications agency. At that</p> <p>18 time, it was based in Princeton, New Jersey,</p> <p>19 and now -- it still operates -- it's based in</p> <p>20 Doylestown, Pennsylvania. It's called -- now</p> <p>21 called Deeter USA.</p> <p>22 Q. Do you still work -- strike</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. So just so I understand. You</p> <p>2 stopped being paid in 2002; is that right?</p> <p>3 A. Well, I don't know the answer.</p> <p>4 I don't know exactly. I -- what happened was</p> <p>5 I started writing more in the outdoors. And</p> <p>6 first started writing freelance for outdoor</p> <p>7 magazines and so forth and maintained work as</p> <p>8 a consultant on the marketing side, and did a</p> <p>9 lot of that work through Deeter but also some</p> <p>10 on my own. And then as I got more successful</p> <p>11 on the outdoor writing side, one eclipsed the</p> <p>12 other.</p> <p>13 So I can't tell you</p> <p>14 definitively when I wrote my last marketing</p> <p>15 job and got paid for that -- and I still talk</p> <p>16 to my family about different stuff -- but</p> <p>17 I would assume that, you know, it's right</p> <p>18 around the time that Field & Stream took off</p> <p>19 is when I was able to fully focus on the</p> <p>20 outdoor.</p> <p>21 Q. And you say around the time</p> <p>22 when Field & Stream took off. Did you say</p>
<p style="text-align: right;">Page 23</p> <p>1 that.</p> <p>2 Do you still do any work in</p> <p>3 connection with what's now Deeter USA?</p> <p>4 A. No, I do not.</p> <p>5 Q. And when did you finish working</p> <p>6 in connection with Deeter USA?</p> <p>7 A. Around 2002.</p> <p>8 Q. And just so we're clear. I</p> <p>9 said "Deeter USA," but I also mean the</p> <p>10 company as it was known before that.</p> <p>11 A. Yes.</p> <p>12 Q. And the answer was 2002?</p> <p>13 A. Yes. I -- it's kind of</p> <p>14 nebulous because I -- you know, they're my</p> <p>15 family, so we would sit at the dinner table</p> <p>16 and talk about different things and so forth.</p> <p>17 But I think I stopped getting paid from them</p> <p>18 -- and maybe I would work on a project -- you</p> <p>19 know, write them a press release or write</p> <p>20 them something. Probably -- that would</p> <p>21 extend right up until about 2004, when</p> <p>22 I started working for Field & Stream.</p>	<p style="text-align: right;">Page 25</p> <p>1 that was 2004?</p> <p>2 A. Yeah, I think so. I think</p> <p>3 that's when I got my first assignment.</p> <p>4 Q. So regarding your work with the</p> <p>5 family's company, Deeter Associates and</p> <p>6 Deeter USA, what -- how would you describe</p> <p>7 your role with the company and what you did</p> <p>8 for the company?</p> <p>9 A. I was a client director. I was</p> <p>10 young, but I managed accounts. So I was the</p> <p>11 lead on representing Roche Molecular</p> <p>12 Diagnostics and Roche Pharmaceuticals.</p> <p>13 I managed campaigns on things</p> <p>14 like viral load testing, which at that time</p> <p>15 was key when they were doing AIDS and --</p> <p>16 infectious drug -- infectious disease</p> <p>17 testing, monitoring the amount of virus in a</p> <p>18 person's body, hepatitis C, hepatitis B, HIV,</p> <p>19 and those types of things. And we did the</p> <p>20 testing that allowed doctors to change drug</p> <p>21 treatment therapies and cocktails for those</p> <p>22 to suppress the virus. That was one of the</p>

Confidential Information
Kirk Deeter – November 30, 2016

9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 Q. Do you recall you, personally,</p> <p>2 engaging in preparing and disseminating and</p> <p>3 analyzing marketing surveys?</p> <p>4 MR. SHULL: Object to the form</p> <p>5 of the question.</p> <p>6 A. I don't recall.</p> <p>7 BY MR. BEN-EZRA:</p> <p>8 Q. Mr. Deeter, have we so far</p> <p>9 covered everything that you've done, work and</p> <p>10 experiencewise, from graduation of high</p> <p>11 school through 2004?</p> <p>12 A. Pretty much, yeah.</p> <p>13 Q. Well, is there anything else?</p> <p>14 A. Well, I -- like I said, I was a</p> <p>15 reporter, I worked at Deeter, and I worked --</p> <p>16 did some work on my own as a consultant with</p> <p>17 some of my clients I worked, but it was in</p> <p>18 the same marketing and communications, PR</p> <p>19 advertising world.</p> <p>20 And, as I said, I started to</p> <p>21 freelance outdoor stuff, and that eclipsed</p> <p>22 the other, which brings us to, you know --</p>	<p style="text-align: right;">Page 32</p> <p>1 Stream?</p> <p>2 MR. SHULL: Object to the form</p> <p>3 of the question.</p> <p>4 A. Well, throughout that time, it</p> <p>5 was -- I was freelancing very much, so I</p> <p>6 would write stories for various publications.</p> <p>7 And Field & Stream became -- obviously, since</p> <p>8 it's the largest outdoors brand in the world,</p> <p>9 it was important, you know, to get a story</p> <p>10 there. And I got my first assignment, and</p> <p>11 then my next and my next.</p> <p>12 I actually applied for a job at</p> <p>13 Field & Stream, and went in for an interview,</p> <p>14 and the editor said, you know, How much do</p> <p>15 you fish, and where do you live, and all that</p> <p>16 stuff. And I told him where I lived and how</p> <p>17 much I fish.</p> <p>18 And he said, Why would you want</p> <p>19 to come work in New York? Why don't you stay</p> <p>20 in Colorado and write stories for Field &</p> <p>21 Stream.</p> <p>22 Which was the coolest thing</p>
<p style="text-align: right;">Page 31</p> <p>1 oh, well, I had written a book -- two books</p> <p>2 at that point.</p> <p>3 In 2002, I wrote a book called</p> <p>4 Cast Work. It was about fishing guides. And</p> <p>5 I had been working on that book since</p> <p>6 1997-'98, traveling in the West and fishing</p> <p>7 with guides. It was printed by Willow Creek</p> <p>8 Press in 2002. And that's what -- and then</p> <p>9 we did a sequel in 2003 called Tide Line.</p> <p>10 And those were the books that</p> <p>11 were discovered by Field & Stream that got me</p> <p>12 to write stories for Field & Stream. They</p> <p>13 were my break to Field & Stream.</p> <p>14 Q. Do you know if those books are</p> <p>15 identified in your report?</p> <p>16 A. I don't remember offhand if</p> <p>17 they are. I think they are. I don't know.</p> <p>18 Q. Okay. We'll get to your</p> <p>19 report. That's okay.</p> <p>20 A. Thank you.</p> <p>21 Q. So is it fair to say that the</p> <p>22 next work experience you had was Field &</p>	<p style="text-align: right;">Page 33</p> <p>1 anyone's ever done for me. So that's when</p> <p>2 I say "my break." I mean, it's heartfelt,</p> <p>3 but I really think that they helped me out.</p> <p>4 Q. So in that time period when you</p> <p>5 were writing with the goal of, like you said,</p> <p>6 making -- getting your break with Field &</p> <p>7 Stream, did your writing focus on fishing?</p> <p>8 MR. SHULL: Object to the form</p> <p>9 of the question.</p> <p>10 A. Well, I did a number of things.</p> <p>11 I wrote about fishing, because that was an</p> <p>12 interest for sure, but I was still doing a</p> <p>13 lot of the writing, like I said, freelancing</p> <p>14 on, you know, biotech and things like that.</p> <p>15 Yeah, I think that's the</p> <p>16 extent.</p> <p>17 BY MR. BEN-EZRA:</p> <p>18 Q. Anything beyond biotech?</p> <p>19 A. Well, you know, again, the</p> <p>20 consulting stuff, healthcare could have been,</p> <p>21 you know -- we did Visible Genetics. My wife</p> <p>22 and I did a newsletter for them.</p>

Confidential Information
Kirk Deeter – November 30, 2016

37 (Pages 142 to 145)

<p style="text-align: right;">Page 142</p> <p>1 opinion, expert or otherwise, on the legal</p> <p>2 concept of fame; is that right?</p> <p>3 MR. SHULL: Object to the form</p> <p>4 of the question.</p> <p>5 A. I've never rendered a legal</p> <p>6 opinion on the concept of fame.</p> <p>7 BY MR. BEN-EZRA:</p> <p>8 Q. Have you rendered a nonlegal</p> <p>9 opinion on the concept of fame?</p> <p>10 A. I would -- yeah. In the</p> <p>11 stories I've written, I've called things, you</p> <p>12 know, famous, notable, traditional, you know,</p> <p>13 iconic, established, the major brands that</p> <p>14 define our industry, those types of things.</p> <p>15 Q. And have you ever offered an</p> <p>16 expert opinion regarding the notion of</p> <p>17 something being famous in the context of</p> <p>18 trademark or trade dress law?</p> <p>19 MR. SHULL: Object to the form</p> <p>20 of the question.</p> <p>21 A. No.</p> <p>22 BY MR. BEN-EZRA:</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Not that I know of.</p> <p>2 Q. Do you have any formal training</p> <p>3 in the field of marketing?</p> <p>4 MR. SHULL: Object to the form</p> <p>5 of the question.</p> <p>6 A. Well, that I worked for a</p> <p>7 marketing agency for ten years. I learned.</p> <p>8 My father's been in marketing and</p> <p>9 communications for his whole life, so I grew</p> <p>10 up in that environment.</p> <p>11 BY MR. BEN-EZRA:</p> <p>12 Q. So you're saying you grew up in</p> <p>13 the environment of where your father worked,</p> <p>14 in marketing?</p> <p>15 A. I'm saying that, you know,</p> <p>16 understanding principles of marketing, things</p> <p>17 like, you know, brands, all things we all</p> <p>18 discussed a lot. I didn't go to school for</p> <p>19 that. I wasn't formally trained, but I, you</p> <p>20 know, had on-the-job training while I was</p> <p>21 working at Deeter.</p> <p>22 Q. So on paragraph 15 of your</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. Have you ever offered an expert</p> <p>2 opinion regarding the notion of something</p> <p>3 being iconic in the context of trademark or</p> <p>4 trade dress law?</p> <p>5 MR. SHULL: Object to the form</p> <p>6 of the question.</p> <p>7 A. Not -- no.</p> <p>8 BY MR. BEN-EZRA:</p> <p>9 Q. Have you ever issued an opinion</p> <p>10 -- withdrawn.</p> <p>11 Have you ever issued an expert</p> <p>12 opinion on consumer expectations or</p> <p>13 perceptions?</p> <p>14 MR. SHULL: Object to the form</p> <p>15 of the question.</p> <p>16 A. I've definitely written about</p> <p>17 consumer perceptions of brands.</p> <p>18 BY MR. BEN-EZRA:</p> <p>19 Q. Have you ever prepared an</p> <p>20 expert report in the context of a litigation</p> <p>21 regarding consumer expectations or</p> <p>22 perception?</p>	<p style="text-align: right;">Page 145</p> <p>1 report, Mr. Deeter, it says, "I first became</p> <p>2 aware of YETI coolers in 2008, after seeing a</p> <p>3 YETI Tundra cooler at a trade show in</p> <p>4 Las Vegas, Nevada."</p> <p>5 A. Um-hum.</p> <p>6 Q. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What trade show are you</p> <p>9 referring to?</p> <p>10 A. The ICAST show. And it was</p> <p>11 held in Las Vegas that year.</p> <p>12 Q. So the ICAST show varies in</p> <p>13 location from year to year?</p> <p>14 A. You know, now it's stuck in</p> <p>15 Orlando, and it has been for a few years, and</p> <p>16 I think it will be for a couple more years.</p> <p>17 They're contracted with the cities when they</p> <p>18 go. And back, you know, ten years ago, it</p> <p>19 would alternate between Las Vegas and</p> <p>20 Orlando.</p> <p>21 Q. Did you talk to anyone at the</p> <p>22 Las Vegas trade show from YETI?</p>

Confidential Information
Kirk Deeter – November 30, 2016

48 (Pages 186 to 189)

<p style="text-align: right;">Page 186</p> <p>1 We're used to the red Coleman-type coolers</p> <p>2 with the white lid, so on and so forth. And</p> <p>3 this was a different front fa□ade, so to</p> <p>4 speak. It was -- interesting latches,</p> <p>5 interesting -- you know, the whole package.</p> <p>6 It just looked different.</p> <p>7 Q. So I heard you say "different</p> <p>8 front fa□ade," "interesting latches."</p> <p>9 Anything else that, to you, made the YETI</p> <p>10 cooler stand out?</p> <p>11 A. It wasn't so much the specific</p> <p>12 -- it was the overall impression was a</p> <p>13 different -- it was a different beast than</p> <p>14 what I had seen before.</p> <p>15 Q. Could you be more specific?</p> <p>16 A. Well, no. Just the general</p> <p>17 impression when you looked at the whole thing</p> <p>18 was that it was not the typical Coleman</p> <p>19 cooler.</p> <p>20 Q. And your statement that the</p> <p>21 YETI Tundra you saw in 2008 was unique and</p> <p>22 stood out, that's based on your own personal</p>	<p style="text-align: right;">Page 188</p> <p>1 MR. SHULL: Object to the form</p> <p>2 of the question.</p> <p>3 A. In terms of functional feature,</p> <p>4 you mean like latches and stuff like that?</p> <p>5 BY MR. BEN-EZRA:</p> <p>6 Q. Sure.</p> <p>7 A. You know, not anything that,</p> <p>8 like, made a distinct impression.</p> <p>9 Q. So apart from the -- as you</p> <p>10 described it, the front fa□ade and the</p> <p>11 interesting latches, you can't think of</p> <p>12 anything else that made the YETI Tundra in</p> <p>13 2008 look unique to you?</p> <p>14 MR. SHULL: Object to the form</p> <p>15 of the question.</p> <p>16 A. Well, again, I don't remember</p> <p>17 2008 as much as I remember it, like, now, in</p> <p>18 terms of if I looked at a cooler now, I can</p> <p>19 give you my impressions of that. But 2008,</p> <p>20 it was strikingly different in visual</p> <p>21 appearance from other coolers that I had seen</p> <p>22 and used up until that point. Just the</p>
<p style="text-align: right;">Page 187</p> <p>1 perspective; is that right?</p> <p>2 A. That's right.</p> <p>3 Q. Were there any other coolers</p> <p>4 that you were familiar with at the time that</p> <p>5 you thought the YETI looked different from?</p> <p>6 A. Yeah, I would say that Coleman</p> <p>7 is a good example of what I was talking</p> <p>8 about.</p> <p>9 Q. And that's all that comes to</p> <p>10 mind?</p> <p>11 A. Right now.</p> <p>12 Q. Would you agree that what in</p> <p>13 your opinion made the YETI Tundra look</p> <p>14 different from other coolers related to the</p> <p>15 functional features of the YETI Tundra?</p> <p>16 MR. SHULL: Object to the form</p> <p>17 of the question.</p> <p>18 A. No. I think that it was an</p> <p>19 aesthetic difference.</p> <p>20 BY MR. BEN-EZRA:</p> <p>21 Q. Were there any functional</p> <p>22 features that stood out to you?</p>	<p style="text-align: right;">Page 189</p> <p>1 overall package.</p> <p>2 BY MR. BEN-EZRA:</p> <p>3 Q. In paragraph 14, toward the</p> <p>4 bottom -- it's actually on the same page we</p> <p>5 were on, I think -- it starts on page 3,</p> <p>6 actually.</p> <p>7 A. Uh-huh.</p> <p>8 Q. It says, "Consequently, I have</p> <p>9 become very familiar with the needs of the</p> <p>10 industry and the products available in the</p> <p>11 industry to fill those needs."</p> <p>12 Do you see that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. How do you know what the needs</p> <p>15 of the industry are?</p> <p>16 A. I talk to my readers, in the</p> <p>17 context of Angling Trade, those who sell</p> <p>18 products, and they know what their needs are</p> <p>19 and their sales opportunities are. I talk to</p> <p>20 consumers as well.</p> <p>21 Q. Anything else?</p> <p>22 A. Huh-uh.</p>

Confidential Information
Kirk Deeter – November 30, 2016

51 (Pages 198 to 201)

<p style="text-align: right;">Page 198</p> <p>1 part, on my perception of their advertising. 2 It's also, you know, their presence. 3 Again, you go to these events, 4 and you see the YETI presence at the ICAST 5 show. You see the YETI presence at the Fly 6 Fishing Film Tour. You see YETI associated 7 with, you know, youth camps, or they do 8 special breast cancer pink edition coolers 9 and so forth. They're involved in a number 10 of facets. 11 So you turn around, in my 12 world — as you walk through my world, you 13 know, every once in a while, you turn around 14 and you see — you notice a YETI presence. 15 Q. So then when you — withdrawn. 16 So in making this opinion in 17 the beginning of paragraph 17, would you 18 agree that all those things that you just 19 mentioned, including, for example, seeing 20 banners in halls and seeing YETI presence at 21 different events and things like that, those 22 are all based on you going out and perceiving</p>	<p style="text-align: right;">Page 200</p> <p>1 Is that right? 2 A. Yes. 3 Q. Can you explain, what do you 4 mean when you say they prominently show off 5 the design and appearance of the coolers? 6 A. Oftentimes in a YETI 7 advertisement, it will look just like this. 8 It will show, boom, here's our cooler, and 9 then talk about its attributes. 10 Q. How could any display of the 11 cooler not prominently, in your opinion, show 12 off the features of the cooler? 13 MR. SHULL: Object to the form 14 of the question; calls for 15 speculation. 16 A. You only see one side of the 17 cooler at a time. 18 BY MR. BEN-EZRA: 19 Q. So in your understanding, 20 wouldn't any showing of a picture of a cooler 21 in advertising prominently show off the 22 design and appearance of the cooler? And if</p>
<p style="text-align: right;">Page 199</p> <p>1 those things personally; is that right? 2 MR. SHULL: Object to the form 3 of the question. 4 A. Well, again, partially. I also 5 hear that from other people who are there. 6 I don't go to every Fly Fishing Film Tour 7 event, for example. And hear from people in 8 Maine, you know, what they've been able to 9 do. Through the TU grapevine, I've heard 10 about stuff. 11 So other people have a 12 collective opinion that I am able to tap into 13 and share every once in a while. 14 THE VIDEOGRAPHER: Excuse me, 15 Counsel. Seven minutes until media 16 change. 17 MR. BEN-EZRA: Okay. 18 BY MR. BEN-EZRA: 19 Q. So in paragraph 17, you go on 20 to say, "In its advertisements, YETI 21 prominently shows off the design and 22 appearance of its Tundra and Roadie coolers."</p>	<p style="text-align: right;">Page 201</p> <p>1 not, can you explain why not? 2 A. No, I think that if you're 3 going to prominently display your product in 4 an advertisement, it makes the impression of 5 what the product looks like. 6 Q. Did you write that sentence in 7 paragraph 17? 8 A. Which specific sentence? 9 Q. The one we're talking about, it 10 states, "In its advertisements, YETI 11 prominently shows off the design and 12 appearance of its Tundra and Roadie coolers." 13 A. Yes. In the context of the 14 conversations that I had, those would be what 15 I said. 16 Q. So you wrote that sentence? 17 A. I said those words. 18 Q. In paragraph 17, it goes on to 19 say, toward the bottom, "As a result, YETI is 20 extremely well-known as an industry leader in 21 its Tundra and Roadie coolers, and their 22 design and appearance have become famous and</p>

Confidential Information
Kirk Deeter – November 30, 2016

52 (Pages 202 to 205)

<p style="text-align: right;">Page 202</p> <p>1 extremely well-known and popular."</p> <p>2 Do you see that?</p> <p>3 A. Yep. Yep.</p> <p>4 Q. Who wrote that sentence?</p> <p>5 A. Me, by the same process.</p> <p>6 Q. So what is your exact basis for</p> <p>7 your opinion that YETI's Tundra and Roadie</p> <p>8 coolers and their design and appearance have</p> <p>9 become famous and extremely well-known and</p> <p>10 popular?</p> <p>11 A. It's my opinion. And it's --</p> <p>12 the basis of my opinion is my immersion --</p> <p>13 the immersion -- whatever the word is -- being</p> <p>14 immersed in the market in fly fishing, being</p> <p>15 at the events, being on the docks, being in</p> <p>16 the rivers, being in the boats, things of</p> <p>17 that nature, to see the uptake and the</p> <p>18 immediate, you know, recognition of the YETI.</p> <p>19 I think it's pretty clear.</p> <p>20 So that's my opinion. But I</p> <p>21 stand by my opinion.</p> <p>22 Q. Okay. So you're saying it's</p>	<p style="text-align: right;">Page 204</p> <p>1 BY MR. BEN-EZRA:</p> <p>2 Q. Where did you come up with the</p> <p>3 idea that the YETI coolers are famous?</p> <p>4 A. I just think that, you know,</p> <p>5 "famous" is a word that I used to, you know</p> <p>6 -- came out of my mouth that describes</p> <p>7 something that's widely recognized. That's,</p> <p>8 to me, what famous means.</p> <p>9 Q. Are you aware that the term</p> <p>10 "famous" or "fame" has special meaning in the</p> <p>11 trademark and trade dress context?</p> <p>12 A. I'm not.</p> <p>13 Q. You're saying that it wasn't</p> <p>14 the lawyers here that proposed that word to</p> <p>15 you?</p> <p>16 A. No. I think that I said the</p> <p>17 word "famous."</p> <p>18 Q. Did you perform any formal</p> <p>19 market surveys, polls, or studies to support</p> <p>20 your opinion regarding the popularity --</p> <p>21 MR. SHULL: Object to form of</p> <p>22 the question.</p>
<p style="text-align: right;">Page 203</p> <p>1 based on those different -- your perceiving</p> <p>2 those different things that you mentioned,</p> <p>3 including being immersed in the market in fly</p> <p>4 fishing, being at events, being in the docks.</p> <p>5 Is that right?</p> <p>6 A. Yeah. Being in the boats,</p> <p>7 being part of the culture of fly fishing and</p> <p>8 fishing, in general.</p> <p>9 Q. Would you agree that the YETI</p> <p>10 coolers' functionality and its performance</p> <p>11 makes the YETI coolers well-known and</p> <p>12 popular?</p> <p>13 MR. SHULL: Object to the form</p> <p>14 of the question.</p> <p>15 A. I think that -- I think that</p> <p>16 it's -- you know, function and performance is</p> <p>17 part of any product's reputation but so is</p> <p>18 how they look. So I think it's a factor. I</p> <p>19 think both aesthetics and performance are a</p> <p>20 factor.</p> <p>21 THE VIDEOGRAPHER: Counsel, two</p> <p>22 minutes.</p>	<p style="text-align: right;">Page 205</p> <p>1 BY MR. BEN-EZRA:</p> <p>2 Q. -- of the YETI coolers?</p> <p>3 MR. SHULL: Object to the form</p> <p>4 of the question.</p> <p>5 A. I didn't perform formal, but,</p> <p>6 again, I go back to the -- being immersed in</p> <p>7 the market. I'm in a constant state of</p> <p>8 research, constant state of tapping into the</p> <p>9 feelings in the market. So yes, I feel like</p> <p>10 I'm tuned into that.</p> <p>11 MR. BEN-EZRA: Let's end it</p> <p>12 there so we can switch the tape.</p> <p>13 THE VIDEOGRAPHER: This is the</p> <p>14 end of Media 2. We're going off the</p> <p>15 record at 3:45.</p> <p>16 - - -</p> <p>17 (A recess was taken from</p> <p>18 3:45 p.m. to 3:58 p.m.)</p> <p>19 - - -</p> <p>20 THE VIDEOGRAPHER: We're back</p> <p>21 on the record at 3:58. This is</p> <p>22 Media 3 in the deposition of Kirk</p>

Confidential Information
Kirk Deeter – November 30, 2016

57 (Pages 222 to 225)

Page 222	Page 224
<p>1 since I wrote those books about guides, which 2 launched my career with Field & Stream, which 3 was about guides. Was a guide myself. Have, 4 you know, championed the role of the guide 5 for years.</p> <p>6 It's my opinion that, you know, 7 based on my being part of that family, that's 8 why I form that opinion.</p> <p>9 Q. So what percentage of the fly 10 fishing guides in the United States have you 11 spoken with about YETI coolers face to face?</p> <p>12 A. Oh, I don't know. Many.</p> <p>13 Q. 15 percent?</p> <p>14 A. Oh, again, if I've -- what do 15 we qualify "discussion"? Sitting one-on-one, 16 me talking to you? What do you think about 17 YETI coolers? I've probably had that 18 conversation with dozens of guides.</p> <p>19 If you count standing on a 20 stage at a film tour event and talking to 21 people and say, Hey, did you guys notice this 22 film brought to you by YETI, blah, blah,</p>	<p>1 to whether you conducted a formal survey or 2 poll to come up with your opinion that 3 90 percent of fly fishing guides would 4 consider YETI Tundra and Roadie coolers to be 5 the best coolers available?</p> <p>6 A. Yes.</p> <p>7 MR. SHULL: Object to the form 8 of the question.</p> <p>9 A. But yes.</p> <p>10 BY MR. BEN-EZRA:</p> <p>11 Q. So paragraph 20 of your report, 12 it's a long paragraph. Go ahead and take a 13 look at it.</p> <p>14 A. Uh-huh. Uh-huh. 15 (Document reviewed.)</p> <p>16 Q. Let me know when you're ready. 17 (Document reviewed.)</p> <p>18 A. I'm ready.</p> <p>19 Q. And would you agree that in 20 paragraph 20, your statement includes that in 21 your experience, individuals in the outdoor 22 and fishing industry associate the overall</p>
Page 223	Page 225
<p>1 blah, thousands of people.</p> <p>2 Q. But how many -- withdrawn. 3 About how many fly fishing 4 guides do you personally know that own a 5 YETI?</p> <p>6 A. I can't -- I can't even begin 7 to -- I would -- you know, I would estimate 8 I personal -- personally, I'm friends with a 9 couple hundred guides who own YETIs.</p> <p>10 Q. In forming your opinion that 11 we've been talking about in paragraph 19, did 12 you conduct a formal marketing survey or poll 13 to support your opinion that virtually every 14 fly fishing guide uses a YETI Tundra or 15 Roadie cooler?</p> <p>16 MR. SHULL: Object to the form 17 of the question.</p> <p>18 A. No. I just fished with a lot 19 of guides. 20 ///</p> <p>21 BY MR. BEN-EZRA:</p> <p>22 Q. And would it be the same answer</p>	<p>1 design and appearance of the coolers with a 2 single source, and that source is YETI, 3 regardless of whether any words or brands are 4 on the coolers?</p> <p>5 Do you see that?</p> <p>6 A. Um-hum.</p> <p>7 Q. And then you go on to talk 8 about, if you asked a hundred fishermen to 9 identify a YETI cooler out of a lineup, you 10 expect more than 90 to be able to do so, 11 regardless of whether the brand was on the 12 cooler.</p> <p>13 A. Yes.</p> <p>14 Q. What's the basis for your 15 opinion or opinions?</p> <p>16 A. Again, conversations and having 17 covered and been immersed in the fishing and 18 outdoor industry for the last, you know, 19 20 years. And however long YETI's been 20 around, I've seen them kind of come onto the 21 market and grow.</p> <p>22 Q. So is it the same basis that we</p>

Confidential Information
Kirk Deeter - November 30, 2016

58 (Pages 226 to 229)

<p style="text-align: right;">Page 226</p> <p>1 talked about for the last few questions?</p> <p>2 MR. SHULL: Object to the form</p> <p>3 of the question.</p> <p>4 A. It would be the fact that I'm</p> <p>5 -- in producing the work that I produce, I</p> <p>6 have a unique interaction with professionals</p> <p>7 and consumers that take part in fishing,</p> <p>8 specifically, and also the outdoors in</p> <p>9 general.</p> <p>10 BY MR. BEN-EZRA:</p> <p>11 Q. Okay. So am I correct in</p> <p>12 saying that you're saying the basis for your</p> <p>13 opinion is that -- or rather, is your</p> <p>14 personal experiences in fishing and your</p> <p>15 personal conversations and observations --</p> <p>16 MR. SHULL: Object to the form</p> <p>17 of the question.</p> <p>18 BY MR. BEN-EZRA:</p> <p>19 Q. -- in the fishing industry?</p> <p>20 A. That's how I form all my</p> <p>21 opinions, by my personal observations and</p> <p>22 conversations with others.</p>	<p style="text-align: right;">Page 228</p> <p>1 BY MR. BEN-EZRA:</p> <p>2 Q. In paragraph 22, do you see</p> <p>3 where it says, "Even if there were no YETI</p> <p>4 labels on the Tundra and Roadie coolers or if</p> <p>5 non-YETI labels were on the coolers, I would</p> <p>6 expect that individuals in the outdoor and</p> <p>7 fishing industry would be able to tell</p> <p>8 whether a cooler is a YETI" because features</p> <p>9 you identified in paragraph 21 --</p> <p>10 A. Um-hum.</p> <p>11 Q. -- are tell-tale signs that the</p> <p>12 cooler is a YETI cooler?</p> <p>13 A. Um-hum.</p> <p>14 Q. So similar questions for your</p> <p>15 statement here, that individuals in the</p> <p>16 outdoor and fishing industry would be able to</p> <p>17 tell a YETI cooler?</p> <p>18 A. Yeah, I believe they would.</p> <p>19 Q. And -- okay.</p> <p>20 And is your basis for the</p> <p>21 opinion here that we just talked about the</p> <p>22 same as for the one we talked about in</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Have you had a discussion with</p> <p>2 every fisherman in the United States about</p> <p>3 whether they could recognize YETI Tundra or</p> <p>4 Roadie coolers, regardless of whether any</p> <p>5 words or brands are on the coolers?</p> <p>6 A. No, I have not.</p> <p>7 Q. How many have you spoken with</p> <p>8 specifically about whether they could</p> <p>9 identify a YETI Tundra or Roadie cooler,</p> <p>10 regardless of whether any words or brands</p> <p>11 were on the coolers?</p> <p>12 A. You know, I don't know specific</p> <p>13 numbers, but I would assume that was dozens.</p> <p>14 Q. Did you conduct a formal survey</p> <p>15 or poll to come up with your opinion?</p> <p>16 A. No --</p> <p>17 MR. SHULL: Object to the form</p> <p>18 of the question.</p> <p>19 A. -- not in the context that you</p> <p>20 said, but my formal work is to test and</p> <p>21 understand the opinions of people in the</p> <p>22 market -- the outdoor market.</p>	<p style="text-align: right;">Page 229</p> <p>1 paragraph 20?</p> <p>2 MR. SHULL: Object to the form</p> <p>3 of the question.</p> <p>4 A. Yes. My basis for my opinions</p> <p>5 in all of this is my professional immersion</p> <p>6 in the fishing and outdoor market and</p> <p>7 interacting with consumers and other media</p> <p>8 professionals and retailers and</p> <p>9 manufacturers.</p> <p>10 BY MR. BEN-EZRA:</p> <p>11 Q. And in connection with that</p> <p>12 opinion in paragraph 22, did you conduct a</p> <p>13 formal survey or poll to come up with your</p> <p>14 opinion?</p> <p>15 MR. SHULL: Object to the form</p> <p>16 of the question.</p> <p>17 A. Not in the context that we've</p> <p>18 discussed, but my profession is pretty much a</p> <p>19 rolling formal research.</p> <p>20 BY MR. BEN-EZRA:</p> <p>21 Q. In paragraph 21, you state, in</p> <p>22 the first sentence, "The design and</p>

Confidential Information
Kirk Deeter – November 30, 2016

59 (Pages 230 to 233)

Page 230	Page 232
<p>1 appearance of YETI Tundra and Roadie coolers 2 have become iconic and famous in the outdoor 3 and fishing industry." 4 A. Yes. 5 Q. Where is your explanation of 6 how they became iconic in your opinion? 7 A. I think that the brand 8 recognition factors that we talked about 9 already would constitute an icon or fame. 10 People -- I could pull a guide 11 off of the Street and show him a YETI cooler, 12 and if I were to bet -- if I had to bet you 13 \$20, I'm sure he'd tell you that it was a 14 YETI cooler. I'd take the bet on that he'd 15 be able to do it on sight, or she'd be able 16 to do it on sight. 17 Q. And just so it's clear, what's 18 your basis for your opinion that YETI Tundra 19 and Roadie coolers have become iconic? 20 A. I think that they are -- in the 21 people that I've spoken with, in the anglers, 22 the consumers, the guides, the retailers who</p>	<p>1 A. I don't. 2 Q. Who chose the word "iconic" to 3 use? 4 A. I did, specifically. 5 Q. Okay. Looking at paragraph 21. 6 A. Yes. 7 Q. Go ahead and take a look at it. 8 Let me know when you're ready. 9 A. I'm ready. 10 Q. So you say, near the beginning, 11 that YETI Tundra and Roadie coolers have a 12 distinct look and appearance. Right? 13 A. Right. 14 Q. And the overall shape, design, 15 and appearance of the coolers contribute to 16 their distinctiveness. 17 A. Yes. 18 Q. Okay. And then you go on to 19 list some features; is that right? 20 A. Yes. 21 Q. Okay. So let's mark these. 22 - - -</p>
Page 231	Page 233
<p>1 sell the product, it's become a brand that's 2 grown not only in recognition but in sales. 3 The brand, itself, started from two guys with 4 a pile of coolers at a trade show, to now, 5 YETI is larger than the entire fly fishing 6 market, so . . . 7 And that's not just fishing 8 that did that, that's all outdoor sports. 9 They've been -- you know, I go to my kid's 10 baseball game, and the moms all have little 11 YETI coolers and Ramblers that they're 12 drinking out of and stuff like that. 13 Q. Okay. So you're saying that 14 the basis of your opinion that they have 15 become iconic is based on your personal 16 observations and including your conversations 17 with people you've spoken with, including 18 anglers, consumers, guides, retailers? 19 A. And other media. 20 Q. Okay. Are you aware that the 21 term "iconic" has a special meaning in the 22 trademark and trade dress context?</p>	<p>1 (Whereupon, Exhibit Deeter 313, 2 Color copy picture of YETI Tundra 3 cooler, No Bates, was marked for 4 identification.) 5 - - - 6 (Whereupon, Exhibit Deeter 314, 7 Color copy picture of YETI Roadie 8 cooler, No Bates, was marked for 9 identification.) 10 - - - 11 Q. Mr. Deeter, what do you mean by 12 "the overall shape, design, and appearance"? 13 A. I mean everything that you're 14 looking at. 15 Q. Does that include certain 16 features in the Tundra and Roadie coolers? 17 A. Well, the whole -- yeah, the 18 composite would include -- yep, all the 19 subparts. 20 Q. Okay. You've been handed 21 what's been marked as Exhibits 313 and 314. 22 A. Yes.</p>